

SEP 16 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STEVEN LANDERS,

Defendant - Appellant.

No. 08-30254

D.C. No. CR-07-088-RRB

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, District Judge, Presiding

Argued and Submitted August 6, 2009
Anchorage, Alaska

Before: FARRIS, THOMPSON and RAWLINSON, Circuit Judges.

Defendant-Appellant Steven Landers (“Landers”) was convicted, after a bench trial, of manufacturing with intent to possess and distribute 100 or more marijuana plants in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B). Landers

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

now appeals the district court's denial of his motions to suppress. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

The district court did not err in finding the power company's inspection did not implicate Landers's Fourth Amendment rights because Landers did not meet his burden to show government action. *See United States v. Cleaveland*, 38 F.3d 1092, 1093 (9th Cir. 1995). The power company was furthering its own interests with a legitimate, independent motivation of investigating a possible power theft. *See id.* at 1094. There was no obvious violation of the law requiring the officers' intervention. *See United States v. Reed*, 15 F.3d 928, 931 (9th Cir. 1994).

The district court did not err in denying Landers a *Franks* hearing because the court properly found that Landers failed to make a substantial preliminary showing that any allegedly false statements were made knowingly and intentionally, or with reckless disregard for the truth; and that they were necessary to a finding of probable cause. *See United States v. Craighead*, 539 F.3d 1073, 1080 (9th Cir. 2008), citing *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978).

AFFIRMED.